

earlier perfected security interest if a security agreement is obtained, even though a financing statement is not executed or filed. FmHA or its successor agency under Public Law 103–354, however, will always file a financing statement. State supplements will be issued, as necessary, to further explain the requirements for complying with this section.

(c) *Inventory*. A purchase money security interest in inventory will take priority over an earlier perfected security interest, provided:

(1) A security agreement is taken and a financing statement is filed not later than the time the purchaser receives possession of the property, and

(2) Before the purchaser takes possession of the property, written notice is given to the party holding the earlier perfected interest that the purchase money creditor has acquired or expects to acquire a purchase money security interest in the inventory, which must be described by item or type. When determined necessary by OGC, a State supplement will be issued to further explain the requirements for perfecting a purchase money security interest in inventory.

(d) *Fixtures*. A security interest taken in goods before they become fixtures has priority over a security interest in the real estate to which they are attached. A security interest taken in goods after they become fixtures is valid against all persons later acquiring an interest in the real estate. It is not valid against persons who had an interest in the real estate when the goods become fixtures, unless they execute a consent disclaimer or Form FmHA or its successor agency under Public Law 103–354 440–26, “Consent and Subordination Agreement”.

(e) *Crops*. A security interest taken in crops not more than 3 months before the crops are planted or otherwise become growing crops, has priority over an earlier perfected security interest, if the obligation underlying the earlier interest was due more than 6 months before the crops became growing crops.

[43 FR 55883, Nov. 29, 1978, as amended at 54 FR 47959, Nov. 20, 1989]

§§ 1941.61–1941.62 [Reserved]

§ 1941.63 **Lien search.**

(a) *Required lien searches*. (1) A lien search will be obtained at a time that assures that the security instruments give the Government the required security, usually at the time the financing statement (mortgage or crop pledge in Louisiana) is filed or recorded. Lien searches may be obtained after the financing statement is filed, but never after the delivery of the loan check or the first withdrawal of loan funds from the supervised bank account. Form FmHA or its successor agency under Public Law 103–354 440–13, “Report of Lien Search,” or other lien search forms will be used.

(2) Under the UCC, lien searches are necessary in making subsequent loans if an additional financing statement is required; i.e., when crops or fixtures to be taken as security are or will be located on land not described in the existing financing statement, or when property not covered by the financing statement is to be taken as security for the loan.

(3) Lien searches also may be obtained in connection with processing applications when the County Supervisor determines such searches are necessary on an individual case basis.

(4) Although a lien search is not always required for youths who are minors (as defined in State supplements), the County Supervisor may determine that a search is necessary to assure the Government obtains the required security interest.

(b) *Responsibility for obtaining lien searches*. (1) Applicants should obtain and pay for lien searches. FmHA or its successor agency under Public Law 103–354 County Office employees may make lien searches (at no cost to the applicant) in exceptional cases, such as when no other person is available to provide such a service, or when experience has shown that using the service available would lead to an undue delay in closing the loan and the delay would cause undue hardship to the borrower.

(2) The State Director will issue a State supplement setting forth the requirements for lien searches, including the records to be searched and the periods to be covered.

(3) The applicant should be informed of County Clerks, local attorneys or other persons who will conduct lien searches at a reasonable cost. The applicant will select the lien searcher. The cost of a lien search can be paid from the proceeds of loan checks.

§§ 1941.64–1941.66 [Reserved]

§ 1941.67 Additional requirements for perfecting security interests.

If necessary because of provisions in State statutes, leases, land purchase contracts, or real estate mortgages commonly in use, State Directors will issue State supplements which tell how to obtain a subordination agreement, certification of obligation to landlord, disclaimer, and consent and subordination agreement to perfect security interest.

(a) *Form FmHA or its successor agency under Public Law 103-354 441-5, "Subordination Agreement."* This form will be used if a subordination agreement is required by FmHA or its successor agency under Public Law 103-354 on crops, livestock, farm equipment, or other chattels. If Form FmHA or its successor agency under Public Law 103-354 441-5 is not legally sufficient, a form recommended by OGC will be used. The time to be covered by the subordination agreement generally will be equal to the repayment period of the loan or for the unexpired period of the lease if the borrower is a tenant, but as a minimum will be for the year for which the loan is made.

(b) *Form FmHA or its successor agency under Public Law 103-354 441-17, "Certification of Obligation To Landlord."* This form may be used instead of obtaining a subordination agreement if:

(1) It appears that the applicant is not financially obligated to the landlord except for rent for the lease year and will not incur other obligations to the landlord during that year, and

(2) A State supplement authorizing the use of Form FmHA or its successor agency under Public Law 103-354 441-17 in such cases has been issued.

(c) *Form FmHA or its successor agency under Public Law 103-354 440-26, "Consent and Subordination Agreement."* Unless otherwise provided by a State supplement, this form rather than a sever-

ance agreement will be used in UCC States when a security interest is taken in property after it has become a fixture.

(1) If a debt on an item which has already become a fixture is being refinanced, consent and subordination agreements will be signed before releasing loan funds to the creditor. In all other cases in which a security interest is being taken on an item that already has become a fixture, consent and subordination agreements will be signed no later than the time of loan closing.

(2) Consent and subordination agreements will be taken only in those cases in which the fixture is placed on the real estate before the financing statement and security agreement covering the fixture have been executed, or before the financing statement is filed, or before the request for obligation of funds is signed by the loan approving official.

[43 FR 55883, Nov. 29, 1978, as amended at 54 FR 47959, Nov. 20, 1989]

§§ 1941.68–1941.70 [Reserved]

§ 1941.71 Fees.

The borrower will pay all fees for filing or recording financing statements, mortgages, or other legal instruments and will pay all notary and lien search fees incident to loan transactions. Payment will be made from personal funds or from the proceeds of the loan. Whenever FmHA or its successor agency under Public Law 103-354 employees accept cash to pay for filing or recording fees or for the cost of making a lien search, Form FmHA or its successor agency under Public Law 103-354 440-12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FmHA or its successor agency under Public Law 103-354 employees will make it clear to the borrower that any fee so accepted is not received by the Government as a payment on the borrower's debt, but is accepted only for paying the recording, filing, or lien search fees on behalf of the borrower.